

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO (USA) CO., LTD., a)	Civ. No. 04-00126 ACK-BMK
Delaware corporation,)	
)	
Plaintiff,)	
)	
v.)	
)	
KIAHUNA GOLF CLUB, LLC, a Hawaii)	
limited liability company; KG)	
KAUAI DEVELOPMENT, LLC, a Hawaii)	
limited liability company;)	
PUKALANI GOLF CLUB, LLC, a Hawaii)	
limited liability company; KG)	
MAUI DEVELOPMENT, LLC, a Hawaii)	
limited liability company;)	
MILILANI GOLF CLUB, LLC, a Hawaii)	
limited liability company; QK)	
HOTEL, LLC, a Hawaii limited)	
liability company; OR HOTEL, LLC,)	
a Hawaii limited liability)	
company; KG HOLDINGS, LLC, a)	
Hawaii limited liability company;)	
FRANKLIN K. MUKAI,)	
)	
Defendants,)	
)	
and)	
)	
FRANKLIN K. MUKAI; KIAHUNA GOLF)	
CLUB, LLC, a Hawaii limited)	
liability company; KG KAUAI)	
DEVELOPMENT, LLC, a Hawaii)	
limited liability company;)	
PUKALANI GOLF CLUB, LLC, a Hawaii)	
limited liability company; KG)	
MAUI DEVELOPMENT, LLC, a Hawaii)	
limited liability company;)	
MILILANI GOLF CLUB, LLC, a Hawaii)	
limited liability company; QK)	
HOTEL, LLC, a Hawaii limited)	
liability company; OR HOTEL, LLC,)	

a Hawaii limited liability company; KG HOLDINGS, LLC, a Hawaii limited liability company,
 Third-Party Plaintiffs,
 v.
 SPORTS SHINKO (KAUAI) CO., LTD. a Hawaii corporation; SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawaii corporation, SPORTS SHINKO (MILILANI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (PUKALANI) CO. LTD., a Hawaii corporation, SPORTS SHINKO (HAWAII) CO., LTD., a Hawaii corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawaii corporation,
 Third-Party Defendants,
 and
 SPORTS SHINKO (HAWAII) CO., LTD., a Hawaii corporation; and SPORTS SHINKO (KAUAI) CO., LTD., a Hawaii corporation,
 Third-Party Defendants/Counterclaimants,
 v.
 KIAHUNA GOLF CLUB, LLC, a Hawaii limited liability company; KG KAUAI DEVELOPMENT, LLC, a Hawaii limited liability company; PUKALANI GOLF CLUB, LLC, a Hawaii limited liability company; KG MAUI DEVELOPMENT, LLC, a Hawaii limited liability company; QK HOTEL, LLC, a Hawaii limited liability company; OR HOTEL LLC,

a Hawaii limited liability)
company; KG HOLDINGS, LLC, a)
Hawaii limited liability company;)
FRANKLIN K. MUKAI,)
)
Third-Party)
Counterclaim)
Defendants.)
)

ORDER GRANTING MOTION TO ALTER OR AMEND JUDGMENT IN
CIV. NO. 04-00126 ACK-BMK

On April 5, 2007, this Court issued an Order Granting KG Defendants' Motion To Dismiss Civ. Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK for Lack of Subject Matter Jurisdiction ("Order"), in which the Court dismissed the complaints in those three cases in their entirety for lack of subject matter jurisdiction. On April 10, 2007, the Clerk's Office entered Judgment in Civ. No. 04-00126 ACK-BMK, pursuant to that Order.

On April 19, 2007, Defendant Franklin K. Mukai filed a Motion to Alter or Amend Judgment in Civ. No. 04-00126 ACK-BMK. On April 20, 2007, a group of defendants, counterclaimants and third-party plaintiffs ("KG Parties") filed a joinder in the motion. The Sports Shinko parties did not file an opposition.

Since judgment was not made on the merits, but for lack of subject matter jurisdiction over the entire case, the Court

agrees with Mukai that the Judgment should be modified. See, e.g., Black v. Payne, 591 F.2d 83, 86 n.1 (9th Cir. 1979) (construing judgment "for defendants and against plaintiff" as a judgment on the merits). Accordingly, the Court orders the Clerk's Office to issue an amended judgment. The amended judgment should delete the last paragraph of the existing judgment and replace it with the following paragraph:

IT IS ORDERED AND ADJUDGED that this Court lacked subject matter jurisdiction from the inception of this case. IT IS FURTHER ORDERED AND ADJUDGED that the complaint, all claims, and all parties are dismissed without prejudice to bring suit in the appropriate forum.

The Court notes that it is issuing separate orders in Civ. Nos. 04-00125 ACK-BMK and 04-00128 ACK-BMK similarly directing the Clerk's Office to modify the judgments entered in those cases.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, May 1, 2007.



Alan C. Kay
Alan C. Kay
Sr. United States District Judge

Sports Shinko (USA) Co., Ltd. v. Kiahuna Golf Club, LLC, et al., Civ. No. 04-00126 ACK-BMK, Order Granting Motion To Alter or Amend Judgment in Civ. No. 04-00126 ACK-BMK.